UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,003	10/02/2003	Nancy L. Brown	22188.00	7809

7590 05/04/2004

Richard C. Litman
LITMAN LAW OFFICES, LTD.
P.O. Box 15035
Arlington, VA 22215

EXAMINER	
NELSON JR, MILTON	
ART UNIT	**PAPER NUMBER**
3636	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/676,003	BROWN, NANCY L.	
	Examin r	Art Unit	
	Milton Nelson, Jr.	3636	

-- The MAILING DATE of this communication appears on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date —.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information referred to in the information disclosure statement filed October 2, 2003 has been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 7-10 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (4676551) in view of Tse (6126240).

McDowell shows all claimed features of the instant invention with the exception of:

A. at least three legs depending from the platform (claim 1);

B. a fourth leg depending from the platform (claim 7);

C. the shoe being a pump (claim 12);

D. the shoe being a tennis shoe (claim 13);

E. the shoe being a boot (claim 14);

F. the shoe being a ballet shoe (claim 15);

G. the shoe being a roller skate (claim 16); and

H. the at least three legs consisting of three legs (claim 17).

In McDowell, note the top (12), circular wooden platform (22), cushion (24), legs (14), rigid wooden post (34), padding material (36), golf shoe (18), sock (16), hosiery (37), the post being tubular (note the embodiment of Figure 5), the post being plastic (note the embodiment of Figure 5), the shoes extending radially from a center of the platform (note Figure 1), wherein the shoes are spaced apart by about 120 degrees (note Figure 2).

Tse shows a stool assembly including at least three legs (4) extending from a platform; wherein the at least three legs is four legs (4) extending from a platform.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify McDowell in view of the teachings of Tse by adding at least one more leg to the assembly thereby providing an assembly with at least three legs depending from the platform. Adding at least one more leg increases user safety when using the assembly by enhancing structural stability of the assembly.

Regarding claim 7, it would have been further obvious to one having ordinary skill in the pertinent art at the time of the instant invention to configure the at least one more leg as two legs, thereby providing the assembly with four legs depending from the platform. Adding the forth leg further increases user safety when using the assembly by enhancing structural stability of the assembly.

Regarding claim 12, it would have been an obvious matter of choice in design to further modify the device of McDowell by configuring the shoe as a pump. Configuring

the shoe as a pump instead of a golf shoe solves no problem nor does it provide any unexpected result. Applicant has not disclosed any advantages in one type of shoe over another. The type of shoe designed with assembly merely provides a different look to the assembly. Configuring the shoe as a pump instead of a golf shoe provides an alternate, equivalent configuration for the shoe.

Regarding claim 13, it would have been an obvious matter of choice in design to further modify the device of McDowell by configuring the shoe as a tennis shoe. Configuring the shoe as a tennis shoe instead of a golf shoe solves no problem nor does it provide any unexpected result. Applicant has not disclosed any advantages in one type of shoe over another. The type of shoe designed with assembly merely provides a different look to the assembly. Configuring the shoe as a tennis shoe instead of a golf shoe provides an alternate, equivalent configuration for the shoe.

Regarding claim 14, it would have been an obvious matter of choice in design to further modify the device of McDowell by configuring the shoe as a boot. Configuring the shoe as a boot instead of a golf shoe solves no problem nor does it provide any unexpected result. Applicant has not disclosed any advantages in one type of shoe over another. The type of shoe designed with assembly merely provides a different look to the assembly. Configuring the shoe as a boot instead of a golf shoe provides an alternate, equivalent configuration for the shoe.

Regarding claim 15, it would have been an obvious matter of choice in design to further modify the device of McDowell by configuring the shoe as a ballet shoe. Configuring the shoe as a ballet shoe instead of a golf shoe solves no problem nor does

it provide any unexpected result. Applicant has not disclosed any advantages in one type of shoe over another. The type of shoe designed with assembly merely provides a different look to the assembly. Configuring the shoe as a ballet shoe instead of a golf shoe provides an alternate, equivalent configuration for the shoe.

Regarding claim 16, it would have been an obvious matter of choice in design to further modify the device of McDowell by configuring the shoe as a roller skate. Configuring the shoe as a roller skate instead of a golf shoe solves no problem nor does it provide any unexpected result. Applicant has not disclosed any advantages in one type of shoe over another. The type of shoe designed with assembly merely provides a different look to the assembly. Configuring the shoe as a roller skate instead of a golf shoe provides an alternate, equivalent configuration for the shoe.

Regarding claim 17, it would have been further obvious to one having ordinary skill in the pertinent art at the time of the instant invention to configure the at least one more leg as one leg, thereby providing the assembly with three legs depending from the platform. Adding the third leg further increases user safety when using the assembly by enhancing structural stability of the assembly.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (4676551) in view of Tse (6126240), as applied to claim 1, above, and further in view of Wehrmann et al (4223693).

McDowell, as modified above, shows all claimed features of the instant invention with the exception of the hosiery (37) being nylon.

Wehrmann et al conventionally teaches configuring hosiery from nylon.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify McDowell, in view of the teachings of Wehrmann et al by configuring the hosiery from nylon. Configuring the hosiery from nylon is old and well known in the pertinent art, as nylon is a material that is readily available, relatively inexpensive, sheer and suitable for use in making hosiery.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (4676551) in view of Tse (6126240), as applied to claim 1, above, and further in view of Elsbury (D366968).

McDowell, as modified above, shows all claimed features of the instant invention with the exception of a pant leg disposed over the padding material (36). In McDowell, note that the padding material covers the leg, which is then covered by the hosiery.

Elsbury conventionally teaches configuring a stool assembly with a pant leg as an outermost covering for the leg of the stool (thereby covering any material which may be covering the leg).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify McDowell, in view of the teachings of Elsbury by covering the leg of the stool (including the padding material) with a pant leg. Such a modification merely provides an ornamental change to the assembly for those users who desire a pant leg design to the leg of the assembly.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (4676551) in view of Tse (6126240), as applied to claim 1, above, and further in view of JP (02002300980).

McDowell, as modified above, shows all claimed features of the instant invention with the exception of the wooden platform (22) being a rectangular platform.

JP (02002300980) conventionally teaches configuring a stool assembly with platform that is rectangular in configuration. This can be seen in Figure 1.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify McDowell, in view of the teachings of JP (02002300980) by configuring the circular wooden platform as rectangular. Such a modification merely provides an design choice change to the assembly. Either shape performs equally as well, and the shape merely provides an alternate, equivalent configuration for the platform.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (4676551) in view of Tse (6126240), as applied to claim 1, above, and further in view of Cheetham (4700914).

McDowell, as modified above, shows all claimed features of the instant invention with the exception of the post (34) being made from metal.

Cheetham conventionally teaches configuring a stool assembly with a post (2) that is made from metal.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify McDowell, in view of the teachings of Cheetham by making the post from metal instead of wood. Such a modification provides a material that can be more durable and stronger than the wood that is used for the post (34).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A stool is shown by each of Lawrason, Sr (4332405), Satterfield (D284430), Kellogg (D114681), Collings (D371682), and Manzak (D425729).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
April 28, 2004